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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DENNIS MONTGOMERY, and the
 MONTGOMERY FAMILY TRUST,

Plaintiffs,

v.

ETREPPID TECHNOLOGIES, LLC,
 WARREN TREPP, and the UNITED STATES
 DEPARTMENT OF DEFENSE,

Defendants.

AND ALL RELATED MATTERS.

3:06-CV-00056-PMP-VPC
BASE FILE

3:06-CV-00145-PMP-VPC

**REPLY OF MICHAEL FLYNN TO THE
 OBJECTIONS OF LINER GRODE STEIN
 YAKELEVITZ SUNSHINE REGENSTREIF
 & TAYLOR TO MR. FLYNN'S REQUEST
 TO CONFORM ORDER #985 TO ORDER
 #1150.**

I. SUMMARY OF THE ARGUMENT

The Liner Grode Stein Yankelevitz Sunshine Regensteif & Taylor, LLP ("Liner") Opposition to Mr. Flynn's Request to conform Judge Cooke's Order re: Motion for Sanctions, docket #985 ("Sanctions Order"), to Judge Pro's Order on that Order, docket #1150 ("District Order"), is factually incorrect, legally unsupported, and without merit. Mr. Flynn's motion to conform (dockets #1151 & 1152) should be granted. The crux of the issue here is that the District Court wants it made clear that the if the Sanctions Order intended to sanction Liner under the Court's inherent powers then it must

1 be made clearer.

2 The Liner firm committed deliberate discovery abuse. They should not be permitted to escape
3 punishment on a technicality that the law and the District Order allow to be corrected, particularly since
4 (a) the findings of “bad faith” by Liner are completed and were not disturbed upon the District Court’s
5 review; (b) the Sanctions order clearly intended to sanction Liner under the Court’s inherent powers;
6 (c) the District Order surely permitted such a clarification since it states that there may be “further
7 proceedings;” and (d) not making this clarification would allow a guilty Los Angeles law firm to escape
8 punishment for their substantial misconduct.

9 Liner’s current and self-determined allegation that the most that they did wrong was
10 “negligently supervise” two errant lawyers, Ms. Klar and Pham, is incontrovertibly untrue and cannot
11 be reconciled with the Sanctions Order. (Id.). For over eight months Liner systematically financed
12 comprehensive attempts to subvert Nevada laws and Orders, aided in the subornation of perjury, billed
13 millions of dollars while violating the law, and then (arrogantly) tried to blame the judge. Emails show
14 that *three* named partners, along with Klar and Pham, were billing astounding amounts on Edra
15 Blixseth’s cases, namely Liner, Grode, and Yankelevitz, while Klar and Pham were engaging in
16 egregious litigation misconduct in Nevada, which vexatiously increased this Court’s work.

17 Now that Liner has been caught, they strenuously attempt to evade or escape punishment on
18 a technicality and further mock our justice system. Only when they knew they were caught, after more
19 than a year of misconduct, did senior partners remove Klar and Pham, and then only to have their
20 clients confess \$26.5 million dollars in judgments, which has never been paid, in order to conceal the
21 misconduct they implemented in active collusion with their clients. In reality, that appears to be how
22 the Liner firm conducts business (although hopefully the Sanctions Order has been a reminder that it
23 is not worth it). In addition to failing to cite any law whatsoever to support their opposition, as a
24 matter of public policy and to uphold the integrity of the rule of law, they should not escape
25 punishment. Under these circumstances, including a finding of “complicity” in drafting a perjured
26 declaration, to let Liner escape punishment would be unjust to Nevada’s federal court.

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1 **II. ARGUMENT**

2 **A. Liner's Contention That There Was No Finding of "Bad Faith," or That the**
 3 **Record Does Not Support Such a Finding, is Incontrovertibly Incorrect**

4 The Sanctions Order states that Liner acted in bad faith and it is replete with findings of fact
 5 showing Liner's bad faith, as detailed below. So Liner's contention that there were "no" findings that
 6 they acted in "bad faith" is untrue. (Liner memo, 1:27-2:8, 7:15).

7 The first page of the Sanctions Order states,

8 "[t]he court concludes that the conduct of *the Liner firm* and its attorneys ... was willfully
 9 reckless, intended to harass, done for an improper purpose and was *suffused with bad faith*." (Order #985, 1:20-2:4; *see also* 45:10-13, 48:8-20, 50:12-27 [emphasis added]).

10 The Order also states that "[t]he Liner firm also bears responsibility for what occurred in this
 11 proceeding," and "[t]he Court finds that *the Liner firm acquiesced to or willingly carried out Ms.*
 12 *Klar's litigation strategy*." (Id., 48:8-20 [emphasis added]). Liner acted through its partners Deborah
 13 Klar and Teri Pham and other lawyers who also acted in bad faith. Liner provided the resources, the
 14 money, and they billed millions of dollars in a short time to perpetrate *their misconduct on behalf of*
 15 *and in collusion with their clients*.

16 Amongst other things the Court found that

17 "the conduct of Ms. Klar and Ms. Pham epitomizes the scorched earth litigation tactics that
 18 undermines citizen's confidence in our courts and our system of justice. The court cannot allow
 19 attorneys who practice before it to operate as hired bounty hunters who—are with extensive
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20 The Court also found that Mr. Montgomery committed "perjury," and that Liner lawyers, "Ms. Klar
 21 and Ms. Pham filed this perjured declaration in [this] Court and in California Superior Court." (Order
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22 Contrary to Liner's position, the Sanctions Order was found to be not erroneous and the perjury
 23 findings were impliedly upheld as to it and directly upheld as to Montgomery. The joint and several
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 25 is that the only clarification needed is to unequivocally state that the Liner firm has been sanctioned
 26 pursuant to the Court's inherent powers.

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1 The Sanctions Order also found that collectively, Liner, Ms. Klar and Pham, and Dennis and Brenda
2 Montgomery and the Montgomery Family Trust (“Montgomery”), (collectively “the sanctioned
3 parties”), acted “in bad faith or conduct tantamount to bad faith with the intention to undermine this
4 Court’s orders for the improper purpose of obtaining a more favorable forum ... Ms. Klar and Ms.
5 Pham willfully abused the judicial process in this court ... they did so to delay or disrupt this litigation
6 to gain a tactical advantage ...Ms. Klar and Ms. Pham... multiplied these proceedings, and they did so
7 unreasonably and vexatiously ... Even if Ms. Klar’s and Ms. Pham’s conduct was not totally frivolous,
8 the court finds they were motivated by vindictiveness and bad faith. ... Ms. Klar and Ms. Pham acted
9 recklessly and with an improper intent ...Ms. Klar and Ms. Pham knew, or upon reasonable inquiry
10 should have known, that during Mr. Flynn’s representation of Mr. Montgomery ... there was no reason
11 whatsoever for Mr. Montgomery to concern himself with the state in which Mr. Flynn was admitted
12 to practice law [because] ... were both duly admitted pro hac vice ... Even more disturbing, as events
13 unfolded and this court issued orders that were contrary to Ms. Klar’s litigation strategy, she and Ms.
14 Pham engaged in a continuous pattern of contempt of this Court. Every single court or bar entity
15 that ultimately considered Ms. Klar and Ms. Pham’s campaign to divest this court of jurisdiction over
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21 Liner’s contention that attorney Pham did not know that she could be sanctioned is factually
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23 The opening paragraph of the sanctions motion explicitly recites that sanctions are sought against
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25 Like the technicality with Liner, the technicality regarding Ms. Pham and Ms. Klar should
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1 amount of Pham's shrill defiance or wasteful appeals will ever change those facts. Their current
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13 Accordingly, the Sanctions Order is "suffused" with evidence of Liner's bad faith, and it
 14 specifically found "bad faith" on Liner's part. (Order #985, 1:20-2:4, see also 45:10-13, 48:8-20,
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 16 Order. (*Supra* Order #985, including 1:20-25 37:4-48:7, 49:26-50:11, 52:4-16, findings 88, 101,
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18 **B. Liner's Contention That Sanctions Were ONLY Imposed Under 28 U.S.C.**
 19 **§1927, is Incorrect—In Three Locations it is Quite Clear That Liner was Being**
 20 **Sanctioned "Pursuant to the Court's Inherent Powers," And it is Clear That**
 21 **the District Order Simply Wants That Issue Clarified**

22 There is no dispute that a law firm can be sanctioned under a Court's inherent powers.
 23 *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45-54, 115 L. Ed. 2d 27, 111 S. Ct. 2123 (1991). The
 24 decision to award sanctions is a matter within the court's sound discretion. See *Dahl v. City of*
 25 *Huntington Beach*, 84 F.3d 363, 367 (9th Cir. 1996); *Wages v. Internal Revenue Service*, 915 F.2d

27 ¹ Mr. Flynn notes that Liner's papers to the District Court, asking to review the Sanctions Order
 28 at docket #985, were replete with misrepresentations, half truths, twisted rhetoric, and untruths, so their
 continued misconduct magnifies the need to affirm the Sanctions Order against the Liner firm.

1 1230, 1235 (9th Cir.), cert. denied, 498 U.S. 1096, 111 S. Ct. 986, 112 L. Ed. 2d 1071 (1991);
 2 *Erickson v. Newmar Corp.*, 87 F.3d 298, 303 (9th Cir. 1996). "For a sanction to be validly
 3 imposed, the conduct in question must be sanctionable under the authority relied on." *Cunningham*
 4 *v. County of Los Angeles*, 879 F.2d 481, 490 (9th Cir. 1988) (internal quotations omitted), cert.
 5 *denied*, 493 U.S. 1035, 110 S. Ct. 757, 107 L. Ed. 2d 773 (1990). It is the imperative duty of any
 6 lawyer or party to respectfully yield to the rulings of the court. *See Chapman v. Pacific Tel. & Tel.*
 7 *Co.* 613 F.2d 193, 197 (9th Cir. 1979), citing *Maness v. Meyers*, 419 U.S. 449, 95 S. Ct. 584, 42 L.
 8 Ed. 2d 574 (1975); *see also Hawk v. Sup. Ct.* (1974) 42 CA3d 108, 126-27]).

9 In this case and on this issue, it appears that the District Order simply wants it made clear
 10 that the Sanctions Order is sanctioning Liner under the Court's "inherent powers." (District Order,
 11 doc. #1150, 22:9-10).

12 Liner's contention that the District Order "rejected" that Liner was sanctioned under the
 13 Court's inherent powers is untrue. The District Order said it wasn't clear. In particular, it states,
 14 "To the extent the Magistrate Judge intended to sanction the Liner Firm under the Court's inherent
 15 power, the sanctions order does not make that intention clear. (District Order, doc. #1150, 22:9-
 16 10). This is another example of Liner cherry-picking and leaving out obvious facts.

17 The District Order surely permits this clarification because it specifically states that with
 18 regard to Liner, there may be "further proceedings," and twice it permits "further proceedings."
 19 (Id., 38:3-16). Also, the intent to sanction Liner under the court's "inherent power" was
 20 evidenced by the following, at least, so this is **not** a "retroactive ruling," as Liner erroneously
 21 purports in their effort to escape punishment. (Liner memo, 4:18-20). We know that was the intent
 22 of the Sanctions Order from the very clear words used, including:

23 •First, the necessary findings of "bad faith" by Liner are in the Order. (Order, doc. #985;
 24 *supra* § II. A). They are set forth above, so they will not be repeated.

25 •Second, the Sanction Order specifically states in *three places* that Liner is to be sanctioned
 26 "pursuant to [the Court's] inherent powers." (Doc. #985, 49:18-51:8 [emphasis added], 52:4-
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 28

12, 54:2-3).² However, once it was not made clear. (Doc. #985 48:16-19).

•Third, the Sanctions Order set forth the applicable law to sanction Liner under the Court's inherent authority. (Doc. #985, 32:18-33:22).

Liner has cited nothing to support their contention that the Sanctions Order can not be clarified. As a matter of law, (doc. #985), they engaged in bad faith litigation, and now they are disingenuously trying to disown their lawyers, escape liability, blame the judge and simultaneously justify their clearly sanctionable conduct. This proceeding is not the place to litigate issues between Liner and its lawyers, which issues are not before this Court, (and Mr. Flynn believes is the subject of separate ongoing litigation). Issues of attorney client privilege and more would infect and unnecessarily expand this sanction proceeding. There is no evidence in this record that Liner was not responsible for its lawyers—in fact, the evidence is to the contrary. (*Supra*, §II.A).

In short, since the Sanctions Order stated that it was sanctioning Liner under the court's inherent powers, and since the District Order permits clarification, the Sanctions Order should be clarified.

C. Liner's Allegation That Mr. Flynn's Motion is a Reconsideration is Nonsense

The motion is a motion to conform. It is not called a reconsideration, it does not ask the Court to reverse itself—just the opposite, and it never argues any where that there are new facts that must be considered. The Liner argument is frivolous.

III. CONCLUSION

The Liner firm's misconduct is the type of conduct that is undermining the legal profession. The Liner firm vexatiously multiplied the proceedings and enabled their agents, primarily Pham and Klar, to run amok making, *inter alia*, "stunning misrepresentations" and aiding and

² The three locations where it is clear that Liner was being sanctioned pursuant to the Court's inherent powers are as follows: (1) section IV of docket #985, entitled "Sanctions," specifically discusses Liner's misconduct, and then it specifically states, "Based upon the foregoing [which, again, included Liner's misconduct] the court finds that **pursuant to its inherent powers** and 28 U.S.C. § 1927, the following sanctions should issue," and it goes on to sanction Liner. (Doc. #985, 49:18-51:8, 52:4-12 [emphasis added]). (2) On page 52:4-12, the Sanctions Order again specifically states that the Liner firm is being sanctioned "pursuant to the court's inherent power." (Doc. #985, 52:4-12). (3) on page 54:2-3, again, the Sanction Order specifically states that sanctions were granted "pursuant to 28 U.S.C. §1927 and or **pursuant to the inherent power of the court.**" (Doc. #985, 54:2-3).

1 abetting “perjury,” while Liner raked in millions in legal fees in a short time. One would hope that
2 in light of the Sanctions Order and the District Court’s review of it that the Liner firm would
3 express some remorse for their misconduct or explain how they intend to prevent this from
4 happening again. But, instead, they have continued to twist the record and present half truths,
5 without any shame for their current attempts to evade punishment on technicalities that can be
6 corrected. The Sanctions Order is substantively correct and any procedural deficiency should be
7 clarified so that it is clear that sanctions were against the Liner firm under the Court’s inherent
8 powers for Liner’s bad faith conduct.

9 Respectfully Submitted,

10 /S/_____
11 Michael J. Flynn, Esq.

12 LAW OFFICE OF CARLA DIMARE
13 Carla DiMare, Esq.
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of LOGAR PULVER, and that on the 6th day of May 2010, I

- ☐ deposited for mailing in the U.S. Mail, with sufficient postage affixed thereto
- ☐ sent via Federal Express or other overnight delivery service
- ☐ delivered via facsimile machine to fax number:
- ☐ personally delivered
- ☐ caused to be delivered via Reno-Carson Messenger Service
- ☒ served through the CM/ECF electronic notification system

the foregoing document addressed to:

David R. Grundy, Esq.
Alice Campos, Esq.
Joy R. Graber, Esq.
6005 Plumas Street
Reno, NV 89519

and

Daniel T. Hayward, Esq.
Laxalt & Nomura
9600 Gateway Drive
Reno, NV 89521

/s/ _____
ZACHARY DRAPER
Legal Assistant to Logar Pulver

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 21 **the District Order Simply Wants That Issue Clarified**

22 There is no dispute that a law firm can be sanctioned under a Court's inherent powers.
 23 *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45-54, 115 L. Ed. 2d 27, 111 S. Ct. 2123 (1991). The
 24 decision to award sanctions is a matter within the court's sound discretion. See *Dahl v. City of*
 25 *Huntington Beach*, 84 F.3d 363, 367 (9th Cir. 1996); *Wages v. Internal Revenue Service*, 915 F.2d

27 ¹ Mr. Flynn notes that Liner's papers to the District Court, asking to review the Sanctions Order
 28 at docket #985, were replete with misrepresentations, half truths, twisted rhetoric, and untruths, so their
 continued misconduct magnifies the need to affirm the Sanctions Order against the Liner firm.

1 1230, 1235 (9th Cir.), cert. denied, 498 U.S. 1096, 111 S. Ct. 986, 112 L. Ed. 2d 1071 (1991);
 2 *Erickson v. Newmar Corp.*, 87 F.3d 298, 303 (9th Cir. 1996). "For a sanction to be validly
 3 imposed, the conduct in question must be sanctionable under the authority relied on." *Cunningham*
 4 *v. County of Los Angeles*, 879 F.2d 481, 490 (9th Cir. 1988) (internal quotations omitted), cert.
 5 denied, 493 U.S. 1035, 110 S. Ct. 757, 107 L. Ed. 2d 773 (1990). It is the imperative duty of any
 6 lawyer or party to respectfully yield to the rulings of the court. See *Chapman v. Pacific Tel. & Tel.*
 7 *Co.* 613 F.2d 193, 197 (9th Cir. 1979), citing *Maness v. Meyers*, 419 U.S. 449, 95 S. Ct. 584, 42 L.
 8 Ed. 2d 574 (1975); see also *Hawk v. Sup. Ct.* (1974) 42 CA3d 108, 126-27]).

9 In this case and on this issue, it appears that the District Order simply wants it made clear
 10 that the Sanctions Order is sanctioning Liner under the Court's "inherent powers." (District Order,
 11 doc. #1150, 22:9-10).

12 Liner's contention that the District Order "rejected" that Liner was sanctioned under the
 13 Court's inherent powers is untrue. The District Order said it wasn't clear. In particular, it states,
 14 "To the extent the Magistrate Judge intended to sanction the Liner Firm under the Court's inherent
 15 power, the sanctions order does not make that intention clear. (District Order, doc. #1150, 22:9-
 16 10). This is another example of Liner cherry-picking and leaving out obvious facts.

17 The District Order surely permits this clarification because it specifically states that with
 18 regard to Liner, there may be "further proceedings," and twice it permits "further proceedings."
 19 (Id., 38:3-16). Also, the intent to sanction Liner under the court's "inherent power" was
 20 evidenced by the following, at least, so this is **not** a "retroactive ruling," as Liner erroneously
 21 purports in their effort to escape punishment. (Liner memo, 4:18-20). We know that was the intent
 22 of the Sanctions Order from the very clear words used, including:

23 •First, the necessary findings of "bad faith" by Liner are in the Order. (Order, doc. #985;
 24 *supra* § II. A). They are set forth above, so they will not be repeated.

25 •Second, the Sanction Order specifically states in *three places* that Liner is to be sanctioned
 26 "pursuant to [the Court's] inherent powers." (Doc. #985, 49:18-51:8 [emphasis added], 52:4-
 27
 28

12, 54:2-3).² However, once it was not made clear. (Doc. #985 48:16-19).

•Third, the Sanctions Order set forth the applicable law to sanction Liner under the Court's inherent authority. (Doc. #985, 32:18-33:22).

Liner has cited nothing to support their contention that the Sanctions Order can not be clarified. As a matter of law, (doc. #985), they engaged in bad faith litigation, and now they are disingenuously trying to disown their lawyers, escape liability, blame the judge and simultaneously justify their clearly sanctionable conduct. This proceeding is not the place to litigate issues between Liner and its lawyers, which issues are not before this Court, (and Mr. Flynn believes is the subject of separate ongoing litigation). Issues of attorney client privilege and more would infect and unnecessarily expand this sanction proceeding. There is no evidence in this record that Liner was not responsible for its lawyers—in fact, the evidence is to the contrary. (*Supra*, §II.A).

In short, since the Sanctions Order stated that it was sanctioning Liner under the court's inherent powers, and since the District Order permits clarification, the Sanctions Order should be clarified.

C. Liner's Allegation That Mr. Flynn's Motion is a Reconsideration is Nonsense

The motion is a motion to conform. It is not called a reconsideration, it does not ask the Court to reverse itself—just the opposite, and it never argues any where that there are new facts that must be considered. The Liner argument is frivolous.

III. CONCLUSION

The Liner firm's misconduct is the type of conduct that is undermining the legal profession. The Liner firm vexatiously multiplied the proceedings and enabled their agents, primarily Pham and Klar, to run amok making, *inter alia*, "stunning misrepresentations" and aiding and

² The three locations where it is clear that Liner was being sanctioned pursuant to the Court's inherent powers are as follows: (1) section IV of docket #985, entitled "Sanctions," specifically discusses Liner's misconduct, and then it specifically states, "Based upon the foregoing [which, again, included Liner's misconduct] the court finds that **pursuant to its inherent powers** and 28 U.S.C. § 1927, the following sanctions should issue," and it goes on to sanction Liner. (Doc. #985, 49:18-51:8, 52:4-12 [emphasis added]). (2) On page 52:4-12, the Sanctions Order again specifically states that the Liner firm is being sanctioned "pursuant to the court's inherent power." (Doc. #985, 52:4-12). (3) on page 54:2-3, again, the Sanction Order specifically states that sanctions were granted "pursuant to 28 U.S.C. §1927 and or **pursuant to the inherent power of the court.**" (Doc. #985, 54:2-3).

1 abetting “perjury,” while Liner raked in millions in legal fees in a short time. One would hope that
2 in light of the Sanctions Order and the District Court’s review of it that the Liner firm would
3 express some remorse for their misconduct or explain how they intend to prevent this from
4 happening again. But, instead, they have continued to twist the record and present half truths,
5 without any shame for their current attempts to evade punishment on technicalities that can be
6 corrected. The Sanctions Order is substantively correct and any procedural deficiency should be
7 clarified so that it is clear that sanctions were against the Liner firm under the Court’s inherent
8 powers for Liner’s bad faith conduct.

9 Respectfully Submitted,

10 /S/_____
11 Michael J. Flynn, Esq.

12 LAW OFFICE OF CARLA DIMARE
13 Carla DiMare, Esq.
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of LOGAR PULVER, and that on the 6th day of May 2010, I

- ☐ deposited for mailing in the U.S. Mail, with sufficient postage affixed thereto
- ☐ sent via Federal Express or other overnight delivery service
- ☐ delivered via facsimile machine to fax number:
- ☐ personally delivered
- ☐ caused to be delivered via Reno-Carson Messenger Service
- ☒ served through the CM/ECF electronic notification system

the foregoing document addressed to:

David R. Grundy, Esq.
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Joy R. Graber, Esq.
6005 Plumas Street
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and

Daniel T. Hayward, Esq.
Laxalt & Nomura
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/s/ _____
ZACHARY DRAPER
Legal Assistant to Logar Pulver